

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 12M-44
09425

In re	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various)	
Authorizations in the Wireless Radio Services)	
)	
Applicant with ENCANA OIL AND GAS (USA),	)	Application File Nos. 0004030479,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004144435, 0004193028, 0004193328,
MIDSTREAM, LP; JACKSON COUNTY	)	0004354053, 0004309872, 0004310060,
RURAL MEMBERSHIP ELECTRIC	)	0004314903, 0004315013, 0004430505,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004417199, 0004419431, 0004422320,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004422329, 0004507921, 0004153701,
INC.; INTERSTATE POWER AND LIGHT	)	0004526264, 0004636537,
COMPANY; WISCONSIN POWER AND	)	and 0004604962
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE - MID CONTINENT, LLC;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC. DBA COSERV)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	

MEMORANDUM OPINION AND ORDER

Issued: September 25, 2012

Released: September 25, 2012

By the Presiding Judge:

Preliminary Statement

1. Under consideration are three motions for leave to reply to the Draft Glossary Per Order, FCC 12M-39 and subsequent Erratum to Draft Glossary Per Order, FCC 12M-39 (collectively "*Draft Glossary*") filed by Maritime Communications/Land Mobile, LLC ("Maritime") in this proceeding.

2. The three motions are: (1) Maritime's Motion for Leave to Submit a Reply to Enforcement Bureau's Objection to Maritime's First Draft Glossary ("*Maritime's First Motion for Leave*"); (2) the Enforcement Bureau's Motion for Leave to File Objections to Maritime's Reply ("*Enforcement Bureau's Motion for Leave*"); and (3) Maritime's Reply to General Objections [sic] ("*Maritime's Second Motion for Leave*"). This ruling also considers General Objections to Maritime's First Draft Glossary filed by Environmental, LLC, Intelligent Transportation and Monitoring Wireless,

LLC, and Verde Systems, LLC (“*SkyTel-O’s General Objections*”).

Background

3. Pursuant to *Order* FCC 12M-39 (rel. Aug 7, 2012), Maritime filed its Draft Glossary on August 16, 2012, and subsequently filed an Erratum to that Draft Glossary on August 17, 2012. Two different lines of objections to the *Draft Glossary* have since been filed.

4. The Enforcement Bureau initiated a substantive line of objections when it filed Enforcement Bureau’s Objections to Maritime’s First Draft Glossary on August 22, 2012. In that pleading, the Enforcement Bureau objected to the substantive definitions of some of the terms that Maritime proposed in its *Draft Glossary*. *Maritime’s First Motion for Leave* was filed on August 28, 2012, arguing that efficiency and the public interest would be served by ensuring that the Presiding Judge understood the special meanings of the terms that have arisen in this proceeding.¹ Maritime concurrently filed its Reply to Enforcement Bureau’s Objection to Maritime’s First Draft Glossary. On September 4, 2012, the Enforcement Bureau filed *Enforcement Bureau’s Motion for Leave*, advancing the position that it is in the public interest for the Presiding Judge to have a complete record when considering the meaning of the terms that have arisen in this proceeding.²

5. A procedural line of objections was initiated with the filing of *SkyTel-O’s General Objections* on August 28, 2012. SkyTel-O contends that the *Draft Glossary* was developed without the participation of Warren Havens in violation of the Presiding Judge’s *Order*, FCC 12M-39.³ Maritime filed *Maritime’s Second Motion for Leave*, and again concurrently filed its Reply, on September 12, 2012.⁴

Motions for Leave to File

6. While the Commission’s rules generally prohibit the filing of replies to oppositions,⁵ the Presiding Judge has the authority to permit the filing of additional pleadings.⁶ Maritime and the Enforcement Bureau seek to file pleadings that will further clarify the technical terms and definitions that have arisen in this proceeding. A uniform definition of terms adds certainty to parties’ representations, factual assertions and arguments, i.e., a commonality of meaning. It is in the best interest of decision-making to consider those pleadings that assist in the development of a better understanding of terms and that serve to minimize possible confusion and delay in later stages of this proceeding. Maritime has not yet had an opportunity to respond to SkyTel-O’s allegation that Maritime violated the Presiding Judge’s *Order* when creating the *Draft Glossary*. Permitting Maritime to file a Reply also serves the interest of fairness while providing even more input that may assist in the proper resolution of the issues set for hearing. For these and obvious practical reasons, *Maritime’s First and Second Motions for Leave*, and *Enforcement Bureau’s Motion for Leave* **ARE GRANTED**, and the Enforcement Bureau **SHALL FILE** its objections **by October 2, 2012**.⁷

¹ *Maritime’s First Motion for Leave* at 2.

² *Enforcement Bureau’s Motion for Leave* at 2.

³ *SkyTel-O’s General Objections* at 3-4.

⁴ The two documents filed by Maritime on September 12th both share the identical heading “Reply to General Objections.” In the interest of avoiding confusion, the filing from that data that requests leave to submit a reply is referred to as *Maritime’s Second Motion for Leave* for the purposes of this *Order*.

⁵ 47 C.F.R. § 1.294(b).

⁶ 47 C.F.R. § 1294(d).

⁷ As Maritime concurrently submitted its Replies with its Motions, no further action from Maritime is required.

SkyTel-O's General Objections

7. SkyTel-O argues that Maritime's *Draft Glossary* violates the Presiding Judge's *Order*, FCC 12M-39. SkyTel-O relies on the *Order*'s requirement that "Maritime, with input from Pinnacle [Wireless Communications] and Havens, shall prepare the first draft to circulate among all parties for comment."⁸ While Mr. Havens already volunteered unsolicited suggestions as to what should be included in the Glossary early in the drafting process, Maritime's counsel informed SkyTel-O's counsel that he had "no intention of dealing directly with Mr. Havens or his staff, and shall instead communicate through legal counsel."⁹ SkyTel-O is now contending that Maritime filed and served the *Draft Glossary* without implementing Mr. Havens' earlier suggestions and without contacting Mr. Havens for additional input.¹⁰

8. Maritime argues that SkyTel-O does not have standing to object to the *Draft Glossary* on Mr. Havens' behalf.¹¹ This argument is persuasive. It is axiomatic standing doctrine that an attorney cannot raise claims of an individual that he or she does not represent. In this case, counsel strenuously asserts not to represent Mr. Havens interests. Repeatedly, in its *General Objections*, counsel for SkyTel-O asserts at length that he does not represent Mr. Havens.¹² Therefore, SkyTel-O cannot successfully object to the *Draft Glossary* on the basis of harms that allegedly befell Mr. Havens, while simultaneously disclaiming any representational connection to Mr. Havens. Accordingly, SkyTel-O's plea for the Presiding Judge to not accept the *Draft Glossary* **IS DENIED**.¹³

9. Even if Mr. Havens were to properly file an objection to the method by which the *Draft Glossary* was created, the rejection of the *Draft Glossary* in full would not be proper relief. Rejecting the *Draft Glossary* as a whole would delay this proceeding and result in duplicative expenditures of time and resources by all parties. Additionally, there is no guarantee for Mr. Havens that his proposed remedy would cause Maritime to prepare a new draft that adequately reflects his views.

10. When the Presiding Judge issued *Order*, FCC 12M-39, regarding the process for creating the *Draft Glossary*, he presented a means through which disagreements as to the substance of the glossary could be resolved.

"Any disagreement by any party other than Maritime with terms and/or definitions that have been drafted by Maritime, shall be noted in a separate pleading entitled *Objections to Maritime's First Draft Glossary*."¹⁴

If Mr. Havens believes he has not had a fair opportunity to participate in the creation of the *Draft Glossary*, the best way he can ensure that his concerns are addressed in the finalizing of the glossary is to prepare his own set of substantive objections for the Presiding Judge to review. However, since Mr. Havens is not represented by counsel, and continues to be in violation of previous *Order*, FCC 12M-16

⁸ *Skytel-O's General Objections* at 2 (citing *Order*, FCC 12M-39 at 2).

⁹ *Id.* at Exhibit B.

¹⁰ *Id.* at 4.

¹¹ Reply to General Objections at 4-5.

¹² *Skytel-O's General Objections* at 2 n.1 ("This filing is not made on behalf of Mr. Warren Havens or any entity other than the SkyTel-O entities. The undersigned only represents the SkyTel-O entities. This undersigned does not represent Mr. Havens or any other entities with which he is connected. . . ."); *id.* at 3 ("Undersigned counsel does not represent Mr. Havens. While the interests of the SkyTel-O entities, Mr. Havens, and the other parties may be aligned in some instances, in general, they have different objectives in the proceeding.")

¹³ As *Skytel-O's General Objections* are denied on the threshold issue of standing, the merits of Maritime's other arguments are not considered here in the interest of judicial economy. *Cf. Senior Executives Assoc. et al. v. United States et. al.*, – F.Supp.2d –, 2012 WL 4039814, passim (D.Md. Sept.13, 2012).

¹⁴ *Order*, FCC 12M-39 at 2.

(rel. March 9, 2012), any objections he might have will not be considered as a pleading requiring any reply from any party. Put simply, lacking counsel, Mr. Havens is precluded from advocacy and limited to fact assistance, and appropriate comment on facts, in the course of discovery.

11. When the Presiding Judge released *Order* FCC 12M-39 on August 7, 2012, no deadline was set for the filing of objections to the *Draft Glossary*. It is now appropriate to set such a deadline to ensure that usable definitions are set in a timely manner to establish a better degree of certainty of the meaning of parties' arguments and contentions, particularly in Maritime's accounts of the state of its licensee operations. Accordingly, all parties **SHALL FILE** their Objections to Maritime's First Draft Glossary by **October 2, 2012**.¹⁵

Maritime's Conduct in the Creation of the *Draft Glossary*

12. In its Reply to General Objections, counsel for Maritime states that he informed SkyTel-O that it would "not be dealing with Mr. Havens directly"¹⁶ Counsel sought to justify this refusal to work with Mr. Havens in a later e-mail, citing Mr. Havens' failure to obtain counsel per the Presiding Judge's *Order*, FCC 12M-39.¹⁷ Maritime further relied on traditional ethical rules preventing Maritime's counsel from communicating with Mr. Havens without doing so through counsel and an inability of Maritime's counsel to deal directly with Mr. Havens because of "his history of indefatigable litigiousness"¹⁸ In regard to the latter, it is officially noted that Mr. Havens continues to be a litigious licensee in dealing with Commission requirements and rulings.¹⁹

13. The Presiding Judge's *Order* plainly states that the *Draft Glossary* shall be drafted with input from Mr. Havens.²⁰ It is in the interest of creating a complete record in this case for Mr. Havens and entities that he controls to contribute information that may be of assistance to the resolution of factual and industry practice issues. As an experienced businessman in the field of telecommunications, Mr. Havens should be in a position to make significant contributions to at least formulating the Glossary. Thus, Maritime's counsel should not attempt to rewrite the Presiding Judge's *Order*, or to otherwise impede Mr. Havens from making his contributions. If Maritime has any specific concerns regarding communications with Mr. Havens, we urge Maritime to promptly seek relief with the Presiding Judge. Further self-help efforts waste valuable time and cannot be allowed.

Mr. Havens' Legal Representation

14. In the August 1, 2012 prehearing conference, Mr. Havens sought clarification on the limits of *pro se* representation before the Commission.²¹ The Presiding Judge acknowledges that Mr. Havens was individually named as a party in this proceeding in the Commission's Hearing Designation Order.²² Also named as parties in this proceeding were Environmental, LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; Verde Systems LLC; and V2G LLC.²³ It appears that at the time, Mr. Havens and his companies were

¹⁵ While it is acknowledged that counsel for Skytel-O has a Motion for Leave to Withdraw as Counsel pending before the Presiding Judge, it is expected that counsel continue to fulfill its professional responsibilities and represent Skytel-O until such time as its Motion is resolved.

¹⁶ Reply to General Objections at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Cf. Warren C. Havens*, Memorandum Opinion and Order, 27 FCC Rcd 2756 (2012).

²⁰ *Order*, FCC 12M-39 at 2.

²¹ *See* Tr. 806-813.

²² *See* Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Fair Hearing at 30 ¶ 72.

²³ *Id.*

represented by counsel.

15. Two rules are critical as to the degree to which Mr. Havens can represent himself and the entities with which he is related in this proceeding. The first rule, presented in *Order*, FCC 12M-16, is that, except where otherwise provided by Commission rules, corporate officers or employees can represent their corporation only in matters not designated for evidentiary hearing, unless the presiding officer utilizes his or her discretion to allow them to do so.²⁴ The Presiding Judge stands by the reasoning and conclusions of his previous *Order* with regard to the representation of corporate parties.²⁵ Mr. Havens must acquire legal representation for all the corporations with which he is associated that are party to this proceeding, including the SkyTel-H entities. Mr. Havens may not represent those corporations himself.

16. Upon further reflection, it appears that the Presiding Judge's *Order*, FCC 12M-16, may not have been entirely clear on the issue of Mr. Havens' ability to participate in this proceeding *pro se* to the extent that he sought to represent only himself as an individual. Yet even though Mr. Havens is a named party in this proceeding, he must still comply with a second rule that governs *pro se* representation. This rule provides that an individual cannot represent himself or herself in an individual capacity while simultaneously represented by an attorney in a corporate capacity if the interests of the individual and the corporation are the same.²⁶ Such a situation has the potential to disrupt the proceeding by causing delay and confusion.²⁷ If the interests of the individual and the corporation are not identical, the individual can represent himself or herself,²⁸ although the Presiding Judge, as any trial judge, has discretion to manage the case in discovery and at trial in a way that "prevent[s] duplication and minimize[s] unfairness."²⁹

17. Mr. Havens' ability to represent himself in this proceeding hinges on the degree of similarity between his own interests and those of the corporations with which he is related. While counsel for SkyTel-O has suggested that Mr. Havens' interests differ from those of the corporate entities with which he is related, the Presiding Judge has not been presented with a full, clear explanation of how those interests differ.

18. Accordingly, Mr. Havens **SHALL SHOW CAUSE** why the Presiding Judge should not order him to obtain legal counsel to represent his personal interests in this proceeding. Mr. Havens shall file his Response to Order to Show Cause, complete with explanation by affidavit of declaration under oath, showing how his interests as an individually named party in this proceeding differ from the interests of those corporate parties with which he has a relationship, **by October 2, 2012**. If Mr. Havens fails to respond, the Presiding Judge will make a determination based on the information currently available as to the similarity of Mr. Havens individual and corporate interests in this proceeding. The Presiding Judge may also request bench briefing from other parties, if that is deemed helpful in resolving this question once and for all.

²⁴ See 47 C.F.R. § 1.21(d).

²⁵ *Order*, FCC 12M-16 at 3-5.

²⁶ *In the Matter of Black Television Workshop of Los Angeles, Inc.*, Memorandum Opinion and Order, MM Docket No. 88-420, 7 FCC Rcd 6868, 6870 ¶ 6 (1992).

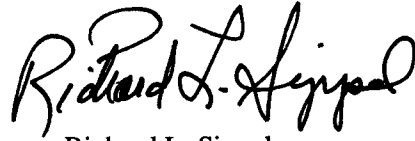
²⁷ *U.S. v. Private Brands*, 250 F.2d 554, 557 (2nd Cir. 1957).

²⁸ *O'Reilly v. New York Times Co.*, 692 F.2d 863, 869 (2nd Cir. 1982).

²⁹ *Id.* at 870.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION³⁰

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive, flowing style with a large initial "R".

Richard L. Sippel
Chief Administrative Law Judge

³⁰ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and Mr. Havens.